IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 2366 of 2004(F)

PETITIONER:

AMBUJAKSHY AMMA. G.,
PULLIKKAL VEEDU, THONNAKKAL P.O.,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS:

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1. **STATE OF KERALA, REPRESENTED BY THE PRINCIPAL SECRETARY (FINANCE) FINANCE (PENSION B) DEPARTMENT, GOVT.SECRETARIAT, THIRUVANANTHAPURAM.**

2. **DIRECTOR GENERAL OF POLICE, POLICE HEAD QUARTERS, THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI. MOHAMMED FAZAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON 17/08/2007 DELIVERED THE FOLLOWING:

WPC.NO.2366/2004 F

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE HEIRSHIP CERTIFICATE ISSUED BY THE TAHSILDAR DTD. 16/08/1999.**

EXT.P2: **COPY OF THE JUDGMENT DTD. 18/03/2003 IN O.P.NO.6744 OF 2001 © OF THIS HON'BLE COURT.**

EXT.P3: **COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENTS DTD. 10/04/2003.**

EXT.P4: **COPY OF THE ORDER NO.24640/PEN.B2/2001/FIN. DTD. 7/10/2003 OF THE 1ST RESPONDENT.**

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.2366 OF 2004-F

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Dated this the 17th day of August, 2007.

JUDGMENT

"CR"

Who is a "widow" for the purpose of Rule 90 in Part III of Kerala Service Rules, hereinafter referred to as the "KSR", including, in particular, the provision therein, regulating the manner of disbursement of family pension in cases where the deceased employee is survived by more than one widow?

2. Sri.R.Gopinathan Nair, a Government servant, who retired on 30-6-1982, died on 24-4-1999. Admitting that he had married another woman, Smt.B.Rajamma, the

petitioner applied for family pension on the ground that she is also a widow of Gopinathan Nair. Though the petitioner has fairly conceded in paragraph 1 of the writ petition that she contracted the relationship with Gopinathan Nair after he had married Rajamma, she claims entitlement to family pension after Rajamma expired on 26-9-1999 and relies on Ext.P1 heirship certificate issued by the Tahsildar to evidence her relationship.

3. When she relied on a provision in Rule 90, this Court set aside the Government's adverse decision and relegated her, as per Ext.P2 judgment, to the Government for re-consideration of her case. Thereafter, as per the impugned Ext.P4 order, the Government again rejected her claim on the ground that only the legally wedded wife can be brought under the scheme of family pension and that the co-habitation that the petitioner claims to have had with Gopinathan Nair, is not a legal relationship notwithstanding her claim as the mother of his children.

4. On behalf of the petitioner, it was argued that in view of the provision incorporated in Rule 90(7), as per GO (P)No.388/67/Fin. dated 29-8-1967, the petitioner is one of the widows and therefore, entitled to family pension.

5. Per contra, the learned Government Pleader argued that there is no proof of any marriage between the petitioner and Gopinathan Nair and in view of her admission that she contracted the relationship with him while he and Rajamma were married, there is no valid marriage between the petitioner and Gopinathan Nair. It is further argued that in the absence of a valid marriage, the petitioner cannot claim to be the widow, to claim family pension, because a legitimate marriage is necessary to treat the petitioner as a widow, in the eye of Law.

6. To resolve the issues, it is necessary to examine the scope of Rule 90(7), in so far as it is relevant. It reads as

follows:

> “The contributory family pension will be admissible:-
>
> x x x x x x x x x x x x x x x x x x x x x x
>
> In cases death occurred prior to 29th August, 1967 and the deceased employee is survived by <u>two or more widows</u> family pension will be paid to the eldest surviving widow. On her death (or in the event of her re-marriage) it will be payable to the next surviving widow, if any. The term 'eldest' would mean seniority with reference to the date of marriage.
>
> In all other cases where death occurred on after 29th August 1967, and
>
> (i) where the deceased employee is survived by <u>more than one widow</u>, the family pension will be paid to them in equal shares. On the death of a widow her share of the family pension will become payable to her eligible son/daughter. If, at the time of her death, a

widow leaves no eligible son/daughter, the payment of her share of family pension will cease.

x x x x x x x x x x x x x x x x x x x x x x x x x x x"

(emphasis supplied)

7. Fixing 29th August 1967 as the cut off date, the widows of Government servants are classified on the basis of the date of death of the Government servant concerned. In cases where the death occurred prior to 29-8-1967 and the deceased employee is survived by two or more widows, the family pension will be paid to the eldest surviving widow, a right that will pass on to the next surviving widow on the death of the elder one. If the death of the Government servant occurred after 29th August 1967, the family pension is to be paid to the widows in equal shares. The phrase "two or more widows" in the earlier paragraph and the phrase "more than one widow" in the latter one make no difference.

8. But the question that falls for decision is as to

who can be called “a widow”, for the purpose of Rule 90, in particular, in terms of the afore-quoted rule. The assimilation of the scope of that term would show that it is the same for the purpose of the different sub-rules in Rule 90. The term “widow” is not defined in the KSR. But, Rule 90 (6) provides that “family” for the purpose of those rules, means, relatives of the employee enlisted under that sub-rule, which includes “wife” in case of male employee and “husband” in case of female employee. It also includes judicially separated wife and judicially separated husband. The overwhelming thrust of the concept of family in terms of that statutory rule is a relationship based on legitimacy of the matrimonial tie. Widow is a woman who has lost her husband by death and has not married again. (See **Chambers's Twentieth Century Dictionary**). The same is the meaning attributed to that word in **Collins Cobuild English Dictionary**, which also says that “if someone is widowed, their husband or wife had died and they have not married again. Widow is a woman who has lost her husband.

The identity of a widow is intricately dependent on her status as wife, which means, of being a married woman; of being the woman who is married. Marriage is a legitimate relationship and its origin and sustenance in law legitimises it.

9. Relationships that the law recognizes are legitimate ones, except in cases where it is appropriate that those which are otherwise, are also to be recognized for a particular purpose.

10. Part III KSR, by Rule 1(b) thereof, is deemed to have come into force with effect from 14-11-1966 unless otherwise specified in the relevant rules. The provision in question was incorporated by the Government Order dated 29-8-1967. This means that it came into force after the Government Servants' Conduct Rules, 1960, hereinafter referred to as the “Conduct Rules”, came into force by its publication in the Gazette on 12-1-1960.

11. Rule 93 of the Conduct Rules reads as follows:

> "**Bigamous Marriages**:- (i) No Government servant who has a wife living shall contract another marriage without first obtaining the permission of the Government, notwithstanding that such subsequent marriage is permissible under the personal law for the time being applicable to him.
>
> (ii) No female Government servant shall marry any person who has a wife living without first obtaining the permission of the Government."

12. The Conduct Rules are issued under Article 309 of the Constitution and therefore, amount to law and hence, infraction thereof, would amount to violation of law. Those rules apply to all Government servants, except to the extent of any exception provided therein. They form the norms and standards for the conduct of the Government servants, laid

down in public interest, by the State in exercise of constitutional power through the Governor. The Conduct Rules are framed in public interest and are matters of public policy. These aspects afford key to the understanding and interpretation of the Conduct Rules.

13. Rule 93 of the Conduct Rules applies to all Government servants. The provision in Rule 93 gives no authorization, nor could it; for the Government to grant permission to a Government servant to contract a subsequent marriage, if it is impermissible under the personal law, for the time being applicable to that person. Notwithstanding that such subsequent marriage is permissible under the personal law of a particular Government servant, that person is prohibited from contracting any marriage without first obtaining the permission of the Government. Though the personal law of a Government servant may permit that person to marry, while a spouse of that person is alive, such a marriage can be

contracted by that Government servant only after obtaining the permission of the Government, for such marriage. Rule 93 requires that a Government servant has to conduct himself in terms of that rule. The obedience or violation of that rule would have a bearing on the legality of such marriage.

14. While it may not be absolutely necessary to decide in this case as to whether the infraction of Rule 93 of the Conduct Rules would result in invalidating the subsequent marriage of such a Government servant, the Government are right in contending that in the context of Rule 93 of the Conduct Rules, the plea of the petitioner does not sustain since it is her admitted case that Gopinathan Nair had earlier married Rajamma.

15. The parties are admittedly Hindus. Hindu Marriage Act, 1955, hereinafter referred to as the “HM Act”, applies to them. Section 5 of that Act provides the

conditions for a Hindu marriage, which, inter alia, prohibits marriage of a person who has a spouse living. The relevant portion of Section 5 of the HM Act reads as follows:

> "**Conditions for a Hindu marriage:**- A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely:-
>
> (i) neither party has a spouse living at the time of the marriage.
>
> (ii) xxxxx xxxxx xxxxx."

16. The effect of the aforesaid legal provision is that during the subsistence of marriage between Gopinathan Nair and Rajamma, the petitioner could not have been validly married by Gopinathan Nair. A marriage between hindus, solemnised otherwise than in terms of Hindu Marriage Act is void - See **Smt. Yamunabai Anantrao Adhav v. Anantrao Shivram Adhav and another** (AIR

1998 SC 644). Admittedly, Gopinathan Nair pre-deceased Rajamma. Therefore, the petitioner will not be able to hold out a valid marriage between her and Gopinathan Nair. Being one in violation of Section 5 of the HM Act, the alleged transaction between the petitioner and Gopinathan Nair cannot be held out to be a marriage.

17. For the aforesaid reasons, the view contained in the impugned order that the petitioner cannot be treated as a widow of Gopinathan Nair is not vitiated by any jurisdictional error or legal infirmity.

In the result, the writ petition fail and is hence dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-